



ABN: 86 117 235 480

Justice Rachel Pepper

Chair, Scientific Inquiry into Hydraulic Fracturing in the Northern Territory

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4<sup>th</sup> September 2017

Dear Justice Pepper,

**Re: Submission in Response to the Interim Report**

As the owner of North Star Pastoral ('NSP') holding a number of pastoral leases in the Northern Territory, I write to provide feedback on the Independent Scientific Panel's Interim Report ('Report') dated 13<sup>th</sup> July 2017.

**1. Introduction**

As you are aware NSP has provided various submissions to the Inquiry and we appreciate the diligence you and the Panel have shown in carefully considering the material. We applaud you and your team for the scope and extent of the stakeholder engagement program that has been conducted to date. It has been inclusive, open, respectful and transparent. It sets a good example for others to follow.

Our comments herein are additional to and supplement the information NSP has already provided during the life of the Inquiry to date.

To recap the key messages from NSP:

- a) have little confidence the gas industry will protect our pastoral interests therefore we have no option but to adopt the Precautionary Principle and support a ban on unconventional shale gas exploration and development;
- b) sustainable and uncompromised groundwater and surface water supplies are vital to sustaining the ecosystems on which the pastoral industry relies;
- c) serious concerns regarding the long term (i.e. 100 + years) security of decommissioned gas wells (that is well integrity including failure of cement capping and steel piping);
- d) major power imbalance favouring with gas companies during any negotiations; need to level the playing field;

- e) serious concerns regarding surface activities on land and attendant risks and liabilities; lack of insurance for damages;
- f) reform the environmental impact assessment ('EIA') process: little trust that the system is fair, open, transparent, robust and accountable; and
- g) There is no national gas 'crisis': Governments and companies chose to send gas overseas instead of providing for the domestic market. They can now be held accountable to redirect Australian gas for domestic supply. Thus mis-management is no reason to pressure the NT to pursue onshore unconventional gas development.

Below we make some specific comments pursuant to material contained in the Report, plus offer a number of recommendations for your consideration.

## **2. Comments**

### ***a) How decisions are made***

Australian society is generally of the view that major decisions, such as whether or not to allow onshore unconventional gas development, is an arrangement pre-determined behind closed doors by big business and government. Based on history there is every reason for the community to feel this way. And the general public is disenchanted that this is 'how the system works'.

We are pleased with the attention you are applying to regulatory reform and encourage you to attempt to drive fundamental and profound change in this arena to deliver a fairer, more open and inclusive process. This will then set a new framework and process for 'how things get done'.

In the case of major projects, governments often spruik how rigorous and comprehensive the consent conditions are. Unfortunately, the rhetoric surrounding the consent is often not matched by the follow-up monitoring, compliance and enforcement of conditions. Government agencies with these responsibilities are notoriously under-resourced, in terms of staff, technology and funds. Government's respond to pressure from business about overzealous regulators by cutting budgets. The community is thus distrustful of the current system and we encourage you and your Panel, with all the power and influence it can muster, to break this mold and to reform the system.

### ***b) Impacts from increased frequency, duration and intensity of cyclones***

Cyclones and storms are likely to increase in frequency, duration and intensity, thanks to climate change. The shale gas industry seeks to operate in parts of the Northern Territory that experience a tropical wet season which involves cyclones from time to time. NSP encourages the Inquiry to carefully consider the risks associated with the increased frequency and intensity of storms, the resultant damage and the consequential environmental, social and economic impacts. A case study worth examining is Hurricane Harvey, a 1-in-1,000 years storm event that hit Texas in August 2017. The devastation wreaked on the local oil and gas industry has been incalculable. What are the lessons from this event for the Northern Territory? Closer to home, Cyclone Cook hit the Bay of Plenty in New Zealand in April 2017. It was a 1-in-50 years storm event. Climate change is already making its presence felt so it would be prudent for the Northern Territory Government to be responding now.

Because of the emerging climate change risks, and learning from the US experience, it should be untenable for the industry to be permitted to operate in the designated wet season in the Northern Territory.

Furthermore, all infrastructure and equipment that may be left in-situ in the wet season must be designed to withstand the potential impacts of storms - flooding and high winds - that are being predicted for 50 – 100 years into the future. The use of wastewater evaporation ponds should be prohibited for use in the wet season zone for obvious reasons.

Some gas companies are indicating they will seal access roads on pastoral lands to allow wet season access. Roads are but one element; creek crossings are just as relevant. In many cases creeks and waterways would require very substantial bridges and embankments to permit wet season access. The economic costs of such would render the industry even more economically unsustainable than it is now.

NSP would welcome this issue receiving even more scrutiny by the Inquiry. We encourage the Panel to examine what impact flooding and wind speeds to levels never seen before arising as a consequence of climate change will have on the proposed gas industry.

### ***c) Hydraulic fracturing and access during the wet season***

Page 54 of the Report states the Panel's preliminary view is that fracking during the wet season should be 'minimised'. NSP urges that fracking during the wet season be prohibited for the reasons enunciated above.

Also, access during the wet season should be prohibited because of logistical issues with road impassability and flooded creek crossings. Whilst roads may be able to be sealed, the bigger issue is the infrastructure upgrades required to design and build bridges and related embankments to cope with increased flooding due to climate change.

### ***d) Long term integrity of the cement plug and well piping***

Page 58 of the Report notes that the major gas companies have not commented on how long the integrity of cement plugs and well casings can be assured. NSP submits this is because they don't really know or the information they have won't assist their bid to develop the industry.

Furthermore, the consequences of failure may well occur after they have departed the scene, and possibly escaped liability. NSP recommends that no approval be given to allowing development of the industry until this matter is resolved to a very high level of confidence.

## **3. Recommendations**

Whilst NSP strongly opposes the development of the onshore unconventional gas industry in the Northern Territory, if the Inquiry is of a mind to not prohibit the industry but rather allow it to proceed, then we offer below some recommendations for the Panel's consideration.

### **A. Whole of Government Policy**

- 1) That the Government prepare and implement a climate change policy that, as one of its elements, recognises cyclones and storms are likely to increase in frequency, duration and intensity causing increased damage and destruction. As a consequence therefore of the attendant risks associated with more severe flooding and wind speeds, any onshore unconventional gas industry must meet more robust regulatory standards designed to withstand the changes in climate anticipated 50-100 years into the future.

'Future climate proofing' to be applied to systems and infrastructure design, construction processes, building materials and the environment in which a structure is built. Decisions about what and how to build infrastructure must take into account lifespan (usually several decades), life-cycle maintenance costs and return on investment.

NSP refers you to the National Climate Change Adaptation Research Facility Policy Guidance Brief 7 'Climate Proofing Australia's Infrastructure' for more details. The link is:

[https://www.nccarf.edu.au/sites/default/files/attached\\_files\\_publications/INFRASTRUCTURE\\_A4-Webview.pdf](https://www.nccarf.edu.au/sites/default/files/attached_files_publications/INFRASTRUCTURE_A4-Webview.pdf)

- 2) That the full cost to Government of the range of planning and assessment, regulation and management activities associated with allowing the onshore unconventional gas industry must be fully covered by user-pays fees. These are separate from royalties and taxes paid by the industry. The Government must declare detailed information on this matter as part of the annual budget process.
- 3) That the Government establish – as a precondition to permitting the onshore unconventional gas industry - a single independent regulator. This body to comprise experts from relevant disciplines, including the earth and environmental sciences and engineering, biological sciences, social sciences and economics (including taxation and carbon risk pricing). The body to equally consider scientific and social sciences to ensure the values and aspirations of local communities are duly considered in future land use planning. The regulator must also be resourced with strong and effective compliance monitoring and enforcement capability.

The functions of this body to advise Government:

- a) on the planning, assessment and management of the industry in the NT through an Annual Statement presented to Parliament;
  - b) on processes for characterising and modelling the natural hydrogeology in said regions;
  - c) on new science and technology developments relevant to managing the industry; and
  - d) on specific research that needs to be commissioned regarding the onshore unconventional gas industry.
- 4) That a third party merit review process in the courts be allowed so parties can challenge the factual basis of any development decisions. In Australia's democratic society this provision is important and will reduce the scope for opaque deals between proponents and government and catch poor decisions.
  - 5) That the Government introduce to relevant government departments internal and external measures to protect against regulatory capture. Regulatory capture occurs when regulatory agencies change over time and move from acting in the public interest (their assigned statutory function) to promoting or advancing the interests of industries they are supposed to be regulating.

## **B. Environmental Impact Assessment**

- 1) That NT project planning and assessment law be amended to mandate an Ecologically Sustainable Development (ESD) approach to project assessment decisions and adoption of the Precautionary Principle. The 'public interest' criteria to be redefined from the typical short-term jobs and royalties rationale to alignment with ESD principles instead;

- 2) That for onshore unconventional gas development the burden of proof to be reversed. Resources and other laws to be amended so that instead of the pastoralist having to prove that the proponent has caused water, land, air or noise impacts, the proponent is to prove that it has not caused impacts;
- 3) That the regulator adopts new remote monitoring technology (e.g. drones, on-site and vehicle mounted cameras, water, noise and dust loggers) and have laws changed so can use such technology in its regulatory functions;
- 4) That any approval for a project includes a condition that proponents install sensitive and sophisticated water, land and air monitoring equipment that provides instant and real-time data that is easily and readily able to be interrogated remotely. The proponent to pay the sum of money that such a system would cost to purchase, install, monitor and maintain;
- 5) That the planning, assessment and determination of a proposed onshore unconventional gas project feature the following:
  - a) priority given to avoidance of impacts before progressing through minimisation to management. That the environmental impacts are internalised to the project thus avoiding 'outsourcing' to neighbouring land and land users and the broader community;
  - b) robust, transparent, specific and measurable consent conditions rather than general or vague requirements that can be interpreted by proponents to their advantage;
  - c) consent conditions include a requirement for an Independent Environmental Audit every two years;
  - d) assessment of cumulative impact of projects;
  - e) regulators have the right to amend project consent conditions up to five years after the commencement of construction to accommodate findings based on reviews of actual performance. Is necessary because the modelling in a proponent's EIS tends to favour the developer and there are financial benefits in predicting lesser impacts;
  - f) stakeholder engagement activities undertaken during the EIS process to include up front project design and scoping, continue throughout all phases of the EIA, with measurement of the effectiveness of the engagement process based on project co-design outcomes that build trust and goodwill and deliver capacity and governance in institutions.
- 6) That the Government undertake an independent peer reviews of the key components of the EIS of projects.
- 7) That the Government introduce a Development Assessment Commission ('DAC') charged with reviewing and determining the applications of major projects. Chaired by a Judge or pre-eminent lawyer, its process to be where statements of claim and counter claim by the various parties can be interrogated and cross examined. Parties would be able to be self-represented and the legal rules of evidence not apply. Members of the DAC would be appointed via an independent, transparent process, say on the recommendation of relevant professional bodies.
- 8) That the Government introduce a third party merit review process so parties can challenge the factual basis of any development decisions in the courts.

### **C. Protection of Landholder's Rights**

- 1) That the relevant legislation to protect pastoralist rights is strengthened and reformed to provide an equitable balance and fair and transparent process when engaging with gas extraction companies in relation to land access, compensation and any disputes. Specifically, that:
  - a) pastoralists are at liberty to say "yes" or "no" to the conduct of gas exploration and/or operations on their land; and
  - b) there will be fair and transparent Land Access Principles, modelled on the agreement on land access for CSG operations in NSW signed on 28<sup>th</sup> March 2014 by Santos and AGL and landholder representatives NSW Farmers, Cotton Australia and the NSW Irrigators Council.
- 2) That a wholly independent, appropriately resourced statutory body headed by a Pastoral Lands Commissioner be established that will act to protect the interests of pastoralists in negotiations with the onshore unconventional gas industry. Pastoralists to have access to dispute resolution activities paid for by the industry. The Commissioner to report annually to Parliament.

### **D. Water Resources Management**

- 1) That a proponent to undertake a comprehensive baseline monitoring program to collect data for our years prior to any proposed onshore unconventional gas project being considered.

- ***Hydraulic fracturing during the wet season***

- 1) That fracking during the wet season is prohibited for the reasons enunciated above (i.e. the increasing risks of extreme flooding and high winds from increased frequency, intensity and intensity of cyclones and other storms).

- ***Long term integrity of the cement plug and well piping***

- 1) That development of the onshore unconventional gas industry is prohibited until such time, if ever, that the industry can demonstrate to a very high level of confidence that the integrity of cement plugs and well casings can be assured for 100 + years.

### **E. Exploration & Production Technical Standards**

- 1) That the Govt prepare an industry-wide code of practice, with input and sign off from all relevant stakeholders, including pastoralists, for the exploration, production and impact management of onshore unconventional gas activities, specifically including requirements for best practice in:
  - a) well integrity (beyond 100 years)
  - b) hydraulic fracturing activities
  - c) produced water
  - d) fugitive emissions
  - e) well decommissioning and long-term security (that is up to and beyond 100 years)
  - f) legacy issues and abandoned wells
  - g) baseline and ongoing monitoring
  - h) rehabilitation

## **F. Regulations - Insurance**

1) That the Government develop a robust and comprehensive policy of appropriate insurance and environmental risk coverage for pastoralists to ensure financial protection – both in the short and long terms. The Government to implement a three-layered policy of security deposits, enhanced insurance coverage, and an environmental rehabilitation fund.

## **4. Conclusion**

In summary NSP encourages the Panel to give careful consideration to the matters raised herein.

Thank you for the opportunity to comment on the Interim Report. I would be pleased to discuss any of the abovementioned matters with you.

My contact details are phone [REDACTED] or email [REDACTED]

Or feel free to contact our adviser Warwick Giblin on [REDACTED] or email [REDACTED]

Yours sincerely



Colin Ross

Managing Director

North Star Pastoral